was a resident, may be subjected to an inheritance tax under the application of the maxim *"mobilia sequuntur personam."* *Bullen v. Wisconsin* (1915) 240 U. S. 625, 36 Sup. Ct. 473; *Frothingham v. Shaw* (1899) 175 Mass. 59, 55 N. E. 623. Cf. *Anderson v. Durr* (1921, U. S.) 42 Sup. Ct. 15; COMMENTS (1922) 31 YALE LAW JOURNAL, 429. And vice versa, where the property has a situs within the state, an inheritance tax may be imposed irrespective of where the decedent or the beneficiary may reside. *Blackstone v. Miller* (1903) 188 U. S. 189, 23 Sup. Ct. 277; *Carr v. Edwards* (1913) 84 N. J. L. 667, 87 Atl. 132. On this latter principle, shares of stock in a domestic corporation may be subjected to a transfer tax although the decedent and beneficiary are non-residents, and the certificates of stock are outside the state. *Greves v. Shaw* (1899) 173 Mass. 205, 53 N. E. 372; *People v. Griffith* (1910) 245 Ill. 532, 92 N. E. 313. It has been held in Illinois, however, that shares of stock in a foreign corporation are not subject to such a tax although the corporation owned property within the state, the conditions being otherwise similar. *Oakman v. Small* (1918) 282 Ill. 360, 118 N. E. 775. The real reason for this doctrine is probably the practical objection to enforcing such a tax by taking the corporate property. See Gleason & Otis, *Inheritance Taxation* (2d. ed. 1919) 321. The reason given by the court, however, was the familiar principle that the taxing power of a state is limited to persons or property within its jurisdiction, which seems inapplicable to the facts of the case since there was property of the corporation in the state, of which the share-holders are of course the owners. But in the instant case an even greater practical difficulty existed, in that there was actually no property in Colorado and hence no way to collect the tax by a proceeding in that state, the beneficiaries being also beyond the jurisdiction. *Pennoyer v. Neff* (1877) 95 U. S. 714. The New York Court, furthermore, was clearly right in dismissing the suit brought by the State of Colorado against the executrix and beneficiaries in New York, since the penal and revenue laws of one state have no force in another. *Wisconsin v. Pelican Insurance Company* (1888) 127 U. S. 265, 8 Sup. Ct. 1370. The present case does not decide whether the tax failed because there was no taxing power or because there was no means of collecting it. It has been held that a state has no constitutional power to impose a transfer tax merely because the beneficiary lives within the state, if the decedent is a non-resident and the property is also outside the state. *State v. Brim* (1858) 57 N. C. 300. This is clearly sound if the tax is upon the privilege of transmitting rather than upon the privilege of receiving. See (1920) 30 YALE LAW JOURNAL, 199; but cf. *Carter's Estate* (1918) 167 Wis. 89, 166 N. W. 657 (evenly divided court); see also *People v. Griffith, supra.* So far as the *power* to tax is involved it appears therefore that the residence of the decedent and not that of the beneficiary is important. (But cf. *Oakman v. Small, supra,* in which the court said that either the beneficiary or the property must be within the jurisdiction.) Hence if the beneficiaries, though resident in New York, could be served with process in Colorado the present tax might be collected. In other words the tax failed for lack of "jurisdiction *in personam*" rather than for lack of "jurisdiction of the subject matter." *People v. Union Trust Co.* (1912) 255 Ill. 168, 99 N. E. 377; *Re Hodges* (1915) 170 Calif. 492, 150 Pac. 344; *Re Dingman* (1901) 66 App. Div. 228, 72 N. Y. Supp. 694. The State of Colorado thus imposed a legitimate tax, for the collection of which, however, under the peculiar circumstances, no adequate machinery can be devised.

TORTS—CONVERSION—DEFENDANT LIABLE FOR A MISDELIVERY RESULTING IN LOSS.—The defendants agreed to buy a certain bond from the plaintiff. By mistake the plaintiffs sent a different bond, which their messenger dropped

through a slot maintained in the defendant's office for the receipt of securities. The defendants immediately discovered the error and, in endeavoring to return the bond to the plaintiff's messenger, handed it out through the window to a stranger, thinking that he was the plaintiff's messenger. The stranger having disappeared with the bond, the plaintiff sued the defendants for conversion. *Held,* that the plaintiff could recover. Lehman, J., *dissenting. Cohen v. Pressprich* (1922, N. Y. Sup. Ct. App. T.) 66 N. Y. L. JOUR. 98 (Jan. 30, 1922).

Conversion being a tort of absolute liability, the responsibility of the defendant is not affected by the fact that he acted in good faith or exercised due care. Pollock, *Torts* (11th ed. 1920) 381; Bowers, *Conversion* (1917) sec. 4. An innocent mistake is no defence. *White v. Yawkey* (1896) 108 Ala. 270, 19 So. 360; *Edwards v. Express Co.* (1903) 121 Iowa, 744, 96 N. W. 740. It is sufficient if the defendant does an act which deprives another of his property permanently or for an indefinite period of time. *Knapp v. Guyer* (1909) 75 N. H. 397, 74 Atl. 873; *Hiort v. Bott* (1874) L. R. 9 Exch. 86; Salmond, *Torts* (5th ed. 1920) 348. A carrier who, through mistake, misdelivers goods is liable for conversion. *Youl v. Harbottle* [1791, N. P.] 1 Peake, 49; *Furman v. Union Pacific Ry.* (1887) 106 N. Y. 579, 13 N. E. 587. The problem presented in the principal case is difficult because the court is called upon to decide which of two innocent persons must suffer. While it appears from the conclusion of the majority opinion that the court was not fully convinced by their own argument, it is believed that the decision is sound. There seems to be no difference in principle between the instant case and the *Hiort* and *Knapp* cases, *supra.* In each of them, the loss was due to the defendant's innocent delivery of the plaintiff's goods to a person who was unauthorized to receive them. It is said that "Any one who finding himself in possession of goods hands them over to another takes on himself the risk that such person may have no right to receive them." Clerk & Lindsell, *Torts* (7th ed. 1921) 238. If this is acceptable as a correct statement of the law, clearly the defendants must bear the loss. It may be doubtful whether they had possession of the bond as soon as it was dropped through the slot provided for the receipt of such papers, but they certainly assumed to control it for an instant before handing it to the stranger.

TRUSTS—VARYING INVESTMENTS AGAINST EXPRESS DIRECTION.—The testator, owner of a business for the cooperage of whiskey barrels, devised the entire estate to his wife as trustee during her life or widowhood, to carry on the business so "that the family will continue to live as nearly as during my life as possible." Because of national prohibition the business became unprofitable. *Held,* that the trustee could, with permission of the court, convert the trust property into other investments in order to carry out the purpose of the trust. *Stout v. Stout* (1921, Ky.) 233 S. W. 1057.

Generally the courts adhere to the rule that a trust instrument is the sole source of all the powers of a trustee. *Drake v. Crane* (1895) 127 Mo. 85, 29 S. W. 990; *Worcester City Missionary Soc. v. Memorial Church* (1904) 186 Mass. 531, 72 N. E. 71. So when specific designation is made by the testator for the investment of the trust estate, it is generally held that the trustee is bound by the directions. *Merchants Loan & Trust Co. v. Northern Trust Co.* (1911) 250 Ill. 86, 95 N. E. 59; *Matter of London* (1918, Surro.) 104 Misc. 372, 171 N. Y. Supp. 981; 1 Perry, *Trusts* (6th ed. 1911) sec. 452. A court of equity can make no new will for the testator. *Drake v. Crane, supra.* However, exceptions to this ancient rule were early recognized. Thus when circumstances arose necessitating acts not literally within the terms of the trust, equity, by constructing what it presumed would have been the testator's intent, gave additional powers to the trustee. *Revel v. Watkinson* (1748, Ch.) 1 Ves. Sen. 93 (mainte-